
Appeal Decision

Site visit made on 5 November 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2021

Appeal Ref: APP/N3020/C/21/3269924

Land at 9 Gedling Road, Carlton, Nottingham NG4 3EX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs P Deabill against an enforcement notice issued by Gedling Borough Council.
 - The enforcement notice was issued on 28 January 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of an unauthorised building.
 - The requirements of the notice are:
 - i) Demolish the unauthorised building
 - ii) Remove all resulting rubble and waste materials to a point of lawful disposal
 - iii) Restore the land to its previous condition
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by deleting the wording of requirement (iii) and replacing it with the following, 'Restore the land to its condition before the breach took place'. Subject to that variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

2. The main issue is the effect of the development on the character and appearance of the area.
3. Number 9 Gedling Road is a traditional house situated on a corner plot. The surface level of the front garden is higher than that of the road. Although the buildings in the area vary in their style, the extensive use of red brick for the houses, complemented by stone walls, is a unifying feature in the vicinity of the appeal property.
4. The appeal building is 7.3m wide, 4.9m deep and 2.5m high, and is prominently located in the front garden. It incorporates an enclosed garden room, together with a separate, semi-enclosed area containing a hot tub. It has a grey finish which matches other structures at the property. It does not, however, match or complement the red brick finish of the house. Moreover, its scale and siting in front of the house means that it partially obscures the front

elevation and appears out of place as a result. Since the house fits well within this traditional setting, partially obscuring it with a large outbuilding detracts from the street scene, particularly given the bland elevations, unrelieved by openings or detailing, that face both roads. While the appellant states that the building is of high quality, that does not alter the harm arising from its scale, siting and finish.

5. Furthermore, the siting of the building and the fact that it is on land that is elevated in relation to the adjoining roads means that it is highly prominent. While there is fencing around it, the building protrudes significantly above this. Although planting has been introduced to screen the building, this has been planted in the very limited space between the building and the fencing, and I cannot assume that it (or any alternative planting which may be specified) will thrive and adequately screen the building in the future. In these circumstances, conditions relating to the retention of the planting or alternative planting would be of little value. While some views of the building from along the road are obscured by existing vegetation, it is very noticeable in direct views from both Gedling Road and Redland Grove to the side.
6. For all of these reasons, the building harms the character and appearance of the area. This places it at odds with the design aims of Policy 10 of the Greater Nottinghamshire Aligned Core Strategy (2014). The Council refers to other policies as well, but they are less relevant to this development. The conflict with Policy 10 leads me to the view that there is conflict with the development plan as a whole.
7. The appellant argues that, if the building were removed, 2m high fencing could be erected in its place. This is said to be likely to occur because of a desire to preserve privacy at the front of the property. However, even if that were to occur, the fencing would be noticeably lower than the 2.5m high building targeted by the notice, and would be less visually intrusive as a result. The same would apply if the building were to be modified to create fencing and, in any event, permitted development provisions would not permit the modification of an existing, unauthorised structure in that way.
8. I appreciate that the appellant regards the front garden as the main amenity space serving the dwelling and that the building was constructed in order to house a hot tub there and provide privacy and shielding from traffic noise, but these considerations do not outweigh the harm I have found. Nor do I see any particular need to provide additional screening for the front ground floor bay window of the house, which is set well back from the road in an elevated position. I have noted that the appellant's neighbours have written in support of the development, but that does not alter my view that it is harmful, for the reasons I have given.
9. Having considered all matters raised in support of the development, I am not persuaded that they outweigh the harm I have found. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

10. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been

caused by the breach. In this case, the notice requires the removal of the building in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).

11. The appellant suggests that the first requirement of the notice could be reworded to state: 'remove the roof of the building and lower the walls to no higher than 2m in height', arguing that the resulting structure would no longer be a building requiring planning permission, since it would be a means of enclosure permitted under Schedule 2, Part 2, Class A of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended). However, I do not accept that argument; permitted development rights cannot be claimed retrospectively and the entire building is unauthorised. In these circumstances, it is not excessive to require the building's removal. Indeed, removal of the building is a necessary step in order to remedy the breach of planning control.
12. That said, the enforcement regime is intended to be remedial rather than punitive, and it is important to consider the appellant's proposals in that context, having regard to the suggestion that a 2m fence might be erected following the removal of the building. However, there is no detailed scheme before me to show the practicalities of modifying the building as the appellant suggests. It is not clear to me how satisfactorily the modifications could be executed and finished, or whether the structure would remain stable and able to withstand weathering if modified as proposed. In short, it has not been established that the modified structure would be a satisfactory substitute for a purpose-built fence. Accordingly, even if the appellant is right to say that a 2m fence could be erected using permitted development rights, I am not persuaded that modifying the building would lead to a similar outcome. I am not, therefore, satisfied that the possibility of fencing is a reason to modify the notice as the appellant suggests.
13. The appellant considers that the third requirement of the notice (to restore the land to its previous condition) is vague. The Council has suggested alternative wording of, 'Restore the land to its condition before the breach took place'. The appellant has expressed a preference for that wording, which reflects the provisions of s173(4)(a) of the Act. I agree that it is a little more precise than the requirement as drafted, and does not imply the need to remove planting or other items unconnected to the unauthorised building. I am satisfied that the requirement can be amended in this way without causing injustice to either party and will vary the notice accordingly. To that extent only, the appeal on ground (f) succeeds.

Peter Willows

INSPECTOR